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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,830	08/26/2002	Crisanto Gutierrez-Armenta	BTGI-0025	2262
34141	7590	04/11/2006	EXAMINER	
COZEN O' CONNOR, P.C. 1900 MARKET STREET PHILADELPHIA, PA 19103-3508			COLLINS, CYNTHIA E	
			ART UNIT	PAPER NUMBER
			1638	

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/088,830	<b>Applicant(s)</b> GUTIERREZ-ARMENTA ET AL.	
	<b>Examiner</b> Cynthia Collins	<b>Art Unit</b> 1638	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 07 March 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☒ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-3,5,6,12-24 and 47.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

 4/3/06

Cynthia Collins  
 Primary Examiner  
 Art Unit: 1638

Continuation of 3. NOTE: (a)The proposed amendment(s) raise new issues that would require further consideration and/or search under 25 USC 112, first and second paragraphs and 35 USC 102/103 with respect to the newly added limitations "a" DNA binding domain, "a" heterodimerization domain and "a" nuclear localization signal; (b)The proposed amendment(s) raise the issue of new matter with respect to the newly added limitations "a" DNA binding domain, "a" heterodimerization domain and "a" nuclear localization signal.

Continuation of 5. Applicant's reply has overcome the following rejection(s): Applicant's proposed claim amendments would, if entered, overcome the following rejections: The rejection of Claim 1 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation of "increasing or decreasing"; The rejection of Claims 1, 12, 22 and 47 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation of "the DNA binding domain", "the heterodimerization domain" and "the nuclear localization signal"; The rejection of Claim 5 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation of "the plant DP protein level"; The rejection of Claims 12, 22 and 47 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation of "ability to"; The rejection of Claims 12 and 22 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation of "increases or decreases"; The rejection of Claims 22 and 47 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation of "modulate"; The rejection of Claim 47 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation of "or effect thereof"; The deposit rejection of Claim 14 under 35 USC 112, first paragraph.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are largely duplicative of those previously addressed. The claimed invention is not described because Applicant has not described a representative number of species falling within the scope of the claimed genus which encompasses DNA sequences that encode functional fragments of SEQ ID NO:2, and DNA sequences that encode variants of SEQ ID NO:2 that have at least 50 or 70% identity to SEQ ID NO:2; The claimed invention is not enabled because the function of a sequence cannot reliably be predicted on the basis of its structure or on the basis its homology to other known sequences, because the effect of expressing in a cell a DP protein, alone or in combination with an E2F protein, is unpredictable, because the conditions for using a sequence as a probe are unpredictable, and because methods for inhibiting the expression of endogenous genes using antisense technology are unpredictable; Certain claims would remain indefinite even upon entry of Applicant's proposed amendments; The claimed invention is not supported by either a specific and substantial asserted utility or a well established utility, because DNA sequences encoding SEQ ID NO:2 are not disclosed in the prior art and because Applicant has not established a specific use for the claimed DNA sequences; Claims 17, 18, 19 and 20 are anticipated by Gillaspay G.E et al.